REMARKS

No amendments have been made. Claims 1, 2, 4 – 10, and 13 – 20 are pending in this Application. Reconsideration and further examination is respectfully requested.

Claim Rejections - 35 U.S.C. §103

1.   Claims 1, 10, & 15 were rejected under 35 USC 103(a) as being unpatentable over Sandstrom (U.S. Patent Publication # 6697373) in view of Rose et al. (U.S. Patent Pub. # 20030115282). This rejection is respectfully traversed.

As explained in the Applicants' previous response, the Applicants' invention uses two metrics – one, a utilization metric representing a measure of current usage of maximum allowed bandwidth for a service; and the other, a current utilization metric representing a measure of current usage of allocated bandwidth for that service. Additional bandwidth is allocated to a service in response to the current utilization metric unless the link is at full capacity; otherwise bandwidth is balanced between the services such that the utilization metrics are made approximately equal. Note that the utilization metrics are based on maximum allowed bandwidth for a service – which is not necessarily equal for each service.

In order to establish a prima facie case of obviousness, one of the several criteria that must be met is that the prior art reference (or references when combined) must teach or suggest all the claim limitations. The Applicants respectfully assert Sandstrom and Rose, taken either alone or in combination, fail to teach or suggest the Applicant's claimed invention. In particular, Sandstrom and Rose fail to teach or suggest the Applicant's claimed utilization metric.

The Office Action admits that "Sandstrom does not disclose computing metric of a usage of maximum allowed bandwidth, and the metric of current usage of the allowed bandwidth, so that the two metrics are made approximately equal to each other."

The Office Action then refers to Rose as follows:

In the same field of endeavor, Rose clearly shows computing for each service a utilization metric (paragraph 0096 (maximum bandwidth parameters)) representing a measure of current usage of a maximum allowed bandwidth for that service (paragraph 0096 (tracks maximum bandwidth to avoid bandwidth peaks)).

computing for each service a current utilization metric (paragraph 0096 (tracks bandwidth usage at each component and the additional bandwidth required) representing a measure of current usage of the allocated bandwidth by that service (paragraph 0096 (bandwidth usage at each component and additional bandwidth required)); and

such that the utilization metrics of the services are made approximately equal to each other (paragraph 0096 (reallocate bandwidth to spread the processing to eliminate overload conditions))

The Applicants disagree with the characterization of Rose as set forth in the Office Action. Rose states that each component in the system has a maximum bandwidth that cannot be exceeded. (Rose [0095]). At paragraph 96 of Rose, it is explained that when a new title request is made, at each component, the current and additional bandwidth required is compared to the maximum for that component. The title is delayed if the maximum is exceeded for any component. Note that bandwidth peaks and overloads are handled via time delays, not via changing of speeds of services.

The Office Action has attempted to characterize the "maximum bandwidth parameters" of Rose as the claimed utilization metric. But these maximum bandwidth parameters are bandwidth parameters of components, not to be exceeded. They cannot be compared and equalized. Therefore, Rose fails to teach or suggest a method of managing bandwidth <u>such that the utilization metrics of the services are made approximately equal to each other</u>, as the Applicants have claimed.

To the extent that the Office Action may attempt to define the measurement of bandwidth usage at each component as a utilization metric, it then re-defines it as the current utilization metric, which the Applicants have separately claimed. And in Rose, the component bandwidths are not compared to each other, they force delays if bandwidth maximums are exceeded anywhere. Thus even if the measurement of bandwidth usage at each component is considere a utilization metric, Rose fails to teach or suggest a method of managing bandwidth <u>such that the utilization metrics of the services are made approximately equal to each other</u>, as the Applicants have claimed.

The Applicants therefore respectfully request that the rejection of Claim 1 be withdrawn. Independent Claim 10 contains limitations similar to those of Claim 1 and is believed allowable for the same reasons. The Applicants therefore respectfully assert that Claim 1, Claim 10, and its dependent Claim 15 are in condition for allowance.

2.   Claims 6, 8, and 13 were rejected under 35 U.S.C. 103(a) as being unpatentable over Sandstrom in view of Rose and further in view of Aimoto et al. (U.S. Patent # 6144636). This rejection is respectfully traversed.

Claims 6 and 8 are dependent on Claim 1. Claim 13 is dependent on Claim 10. As previously set forth, Sandstrom and Rose fail to teach or suggest all the elements set forth in independent Claims 1 and 10. Aimoto adds nothing further that would solve the deficiencies of

Sandstrom and Rose. The Applicants therefore respectfully assert that claims 6, 8 and 13 are in condition for allowance.

3.   Claims 16 - 18 were rejected under 35 U.S.C. 103(a) as being unpatentable over Bruckman et al. (U.S. Patent Publication # 20040179519), in view of Sandstrom and further in view of Rose. This rejection is respectfully traversed.

Independent Claim 16 sets forth a network having first and second network elements, "each of the first and second network elements determining for the first and second services, respectively, a utilization metric representing a measure of current usage of a maximum allowed bandwidth for that service, the first and second network elements balancing the bandwidth allocated to the services if the current utilization metric of at least one of the services exceeds a specified threshold and usage of the bandwidth of the common link is currently at full capacity, such that the utilization metrics of the services are made approximately equal to each other".

Again, Sandstrom and Rose fail to teach or suggest the invention as set forth in Claim 16 for the same reasons as set forth with regard to Claim 1, and Bruckman adds nothing further to solve the deficiencies of Sandstrom and Rose. The Applicants therefore respectfully assert that Claims 16, and dependent Claims 17 and 18, are in condition for allowance.

4.   Claims 2 and 4 were rejected under 35 U.S.C. 103(a) as being unpatentable over Sandstrom in view of Rose and in view of Brandstad et al. (U.S. Patent # 6498782). This rejection is respectfully traversed.

Claim 2 and 4 are dependent on Claim 1. As previously set forth, Sandstrom and Rose fail to teach or suggest all the elements set forth in independent Claim 1. Brandstad adds nothing further that would solve the deficiencies of Sandstrom and Rose. The Applicant therefore respectfully asserts that claims 2 and 4 are in condition for allowance.

5.   Claims 5 and 9 were rejected under 35 U.S.C. 103(a) as being unpatentable over Sandstrom in view of Rose and in view of Brandstad and in view of Aimoto. This rejection is respectfully traversed.

Claim 5 and 9 are dependent on Claim 1. As previously set forth, Sandstrom and Rose fail to teach or suggest all the elements set forth in independent Claim 1. Brandstad and Aimoto add nothing further that would solve the deficiencies of Sandstrom and Rose. The Applicant therefore respectfully asserts that claims 5 and 9 are in condition for allowance.

6.   Claim 14 was rejected under 35 U.S.C. 103(a) as being unpatentable over Sandstrom in view of Rose and Aimoto and in view of Branstad. This rejection is respectfully traversed.

Claim 14 is dependent on Claim 10. As previously set forth, Sandstrom and Rose fail to teach or suggest all the elements set forth in independent Claim 10. Aimoto and Branstad add nothing further that would solve the deficiencies of Sandstrom and Rose. The Applicant therefore respectfully asserts that claim 14 is in condition for allowance.

7.   Claim 7 was rejected under 35 U.S.C. 103(a) as being unpatentable over Sandstrom in view of Rose and in view of Bruckman. This rejection is respectfully traversed.

Claim 14 is dependent on Claim 10. As previously set forth, Sandstrom and Rose fail to teach or suggest all the elements set forth in independent Claim 10. Bruckman adds nothing further that would solve the deficiencies of Sandstrom and Rose. The Applicant therefore respectfully asserts that claim 7 is in condition for allowance.

8.   Claim 19 was rejected under 35 U.S.C. 103(a) as being unpatentable over Bruckman in view of Sandstrom and Aimoto and further in view of Montgomery, JR (US Pub. #2004005745). This rejection is respectfully traversed.

Claim 19 is dependent on Claim 16. As previously set forth, Bruckman and Sandstrom fail to teach or suggest all the elements set forth in independent Claim 16. Montgomery, JR adds nothing further that would solve the deficiencies of Bruckman, Sandstrom, and Aimoto. The The Applicant therefore respectfully asserts that claim 19 is in condition for allowance. The Applicant further points out that Claim 19 is allowable over any combination of Bruckman, Sandstrom, Aimoto, Montgomery, and Rose.

9.   Claim 20 was rejected under 35 U.S.C. 103(a) as being unpatentable over Bruckman in view of Sandstrom and Rose, and in view of Branstad. This rejection is respectfully traversed.

Claim 20 is dependent on Claim 16. As previously set forth, Branstad and Bruckman add nothing further that would solve the deficiencies of Sandstrom and Rose. The Applicant therefore respectfully asserts that claim 20 is in condition for allowance.

CONCLUSION

In view of the amendments and remarks made herein, Applicants submit that the application is in condition for allowance and request early favorable action by the Examiner.

If the Examiner believes that a telephone conversation with the Applicants' representative would expedite allowance of this application, the Examiner is cordially invited to call the undersigned at (508) 303-2003, or at the undersigned's mobile, (617) 901-6786.

The Director is hereby authorized to charge any fees which may be required to Deposit Account No. 14-1315.

Respectfully submitted,

Date: April 28, 2009
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